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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

McAdoo Associates Site
Blaine Street location

McAdoo Borough, Schuylkill
County, Pennsylvania

Respondent

Proceeding Under Section 104(e)
(5) of the Comprehensive
Environmental Response,
Compensation and Liability Act
of 1980, as amended by the
Superfund Amendments and
Reauthorization Act of 1986,
42 U.S.C. § 9604(e)(5)

Docket No. III-94-50-DC

ADMINISTRATIVE ORDER FOR ACCESS ON CONSENT

AR000044

TABLE OF CONTENTS

I.	<u>JURISDICTION</u>	1
II.	<u>STATEMENT OF PURPOSE</u>	2
III.	<u>FINDINGS OF FACT</u>	2
IV.	<u>CONCLUSIONS OF LAW</u>	4
V.	<u>DETERMINATIONS</u>	4
VI.	<u>PARTIES BOUND</u>	5
VII.	<u>ACCESS TO BE PROVIDED</u>	5
VIII.	<u>EPA PROJECT COORDINATOR</u>	7
IX.	<u>RESERVATION OF RIGHTS</u>	8
X.	<u>OTHER CLAIMS</u>	8
XI.	<u>EFFECTIVE DATE AND SUBSEQUENT MODIFICATION</u>	9
XII.	<u>LIABILITY OF THE UNITED STATES GOVERNMENT</u>	9
XIII.	<u>CALCULATION OF TIME</u>	9
XIV.	<u>TERMINATION AND SATISFACTION</u>	9
XV.	<u>PENALTIES FOR NONCOMPLIANCE</u>	10
XVI.	<u>ADMINISTRATIVE RECORD</u>	10
	<u>EXHIBIT 1 - MAP</u>	

AR000045

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ADMINISTRATIVE ORDER FOR ACCESS ON CONSENT

The parties to this Administrative Order by Consent ("Consent Order" or "Order") McAdoo Borough, Schuylkill County, Pennsylvania, ("Respondent") and the United States Environmental Protection Agency ("EPA"), having agreed to the entry of this Consent Order, it is therefore Ordered, that:

I. JURISDICTION

1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9604(e) ("CERCLA"), delegated to the EPA by Executive Order No. 12,580, 52 Fed. Reg. 2923 (1987), and further delegated to the Regional Administrators of EPA by Delegation Number 14-6 and the authority set forth in 40 C.F.R. § 300.400(d). This Consent Order pertains to property located as an extension of North Harrison Street and is adjacent to Plot #49-1-14 in Exhibit 1 in the Borough of McAdoo, Schuylkill County, Pennsylvania. The property will hereinafter be referred to as the "the Site" or "the Property", and is further described in paragraph 3.3 below.

1.2 The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order.

AR000046

1.3 The actions taken pursuant to this Consent Order shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended, ("NCP") and CERCLA.

1.4 The Respondent consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Consent Order.

II. STATEMENT OF PURPOSE

2.1 In entering into this Consent Order, the objective of the parties is for EPA and/or its Authorized Representatives (as defined in paragraph 7.1 below) to obtain entry and access to the Site from the Respondent in order: (1) to conduct any necessary pre-design studies (2) to develop final plans, drawings, specifications, general provisions, and special requirements necessary to implement the remedy set forth in the Operable Unit 2 Record of Decision Amendment (described below) pursuant to the Remedial Design Work Plan developed by EPA for the purpose of conducting the Remedial Design for the Site (3) to conduct those activities necessary to implement both the Operable Unit 2 Record of Decision Amendment and the final plans and specifications pursuant to the Remedial Design and Remedial Action Work Plan for the purpose of conducting the remedial action, as defined by Section 101(24) of CERCLA, 42 U.S.C. § 9601(24), for the Site and all other investigations, monitoring, surveys, testing and other information gathering, as authorized under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), that EPA determines is necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or the environment. The Respondent shall provide access to the Site to EPA and/or its Authorized Representatives (as defined in Paragraph 7.1 below). Remedial action shall also include the operation of treatment or other measures necessary to restore ground and surface water quality to a level that assures protection of human health and the environment for a period of up to 10 years after the construction or installation and commencement of operation as set forth in Section 104(c)(6) of CERCLA, 42 U.S.C. § 9604(c)(6).

III. FINDINGS OF FACT

3.1 McAdoo Borough is a municipality located in Schuylkill County, Pennsylvania organized under the Act of April 3, 1851 (P.L. 320) and the Act of May 14, 1915 (P.L. 312) and the Act of May 4, 1927 (P.L. 519), as amended.

AR000047

3.2 The McAdoo Associates Site totals approximately 8.25 acres and is divided into two separate properties, the Kline Township (MKT) location and the Blaine Street (MBS) location. The MKT location is located in Kline Township, Schuylkill County, in eastern Pennsylvania. The MKT location lies approximately 1.5 miles south of McAdoo Borough due east of U.S. Route 309, and immediately south of the ramp to the I-81 interchange. The MKT location is the site of an old strip mine. The MKT location was used to reclaim metals from metal turnings and high metal content sludges, reportedly using waste solvents as fuel. The MBS location is less than .25 acres and is located in the Borough of McAdoo, Schuylkill County, approximately 3 miles from the MKT location. The MBS location was used in part for the storage of waste oil and hazardous waste in five underground tanks prior to incineration at the MKT location.

3.3 The Property is adjacent to the MBS location of the McAdoo Site and consists of a gravel road which is an extension of North Harrison Street. Access is necessary because a small stream, which will be the receiving stream for the discharge of treated ground water, flows adjacent to this property. The construction of the treatment system on the Property will require less piping than if the system were built on the MBS location, due to the close proximity of the stream.

3.4 The McAdoo Associates Site was placed on the National Priorities List ("NPL") in September, 1983.

3.5 EPA performed an Interim Remedial Measure at the MBS location in 1985 during which EPA excavated and disposed of five underground tanks and contaminated soil.

3.6 EPA's Operable Unit 1 Record of Decision ("OU-1 ROD") requiring excavation of contaminated soils and placement of a cover at the MKT location was implemented by some of the potentially responsible parties pursuant to a Consent Decree with the United States entered by the U.S. District Court for the Eastern District of Pennsylvania on June 24, 1988 (Civil Action No. 87-7352).

3.7 A 1991 EPA Remedial Investigation/Feasibility Study ("RI/FS") documented that surface water and public water supplies would not be affected by the limited number of location-related contaminants remaining in the subsurface soil at the MBS location of the Site.

3.8 EPA issued an Operable Unit 2 ROD ("OU-2 ROD") on September 30, 1991 with a remedy specifying no further action with monitoring for both the MKT and MBS locations.

3.9 As a result of the monitoring required by the OU-2 ROD, 1,1-dichloroethene, benzene, toluene, ethylbenzene, xylenes and bis(2-ethylhexyl)phthalate were discovered at the MBS location. Based on

AR000048

these results, EPA determined that the OU-2 ROD as it pertains to the MBS location was no longer appropriate. In January, 1993, EPA initiated a Focused Feasibility Study ("FFS") to help determine the most appropriate remedy for the MBS location.

3.10 On September 30, 1993, EPA issued an amendment to the OU-2 ROD ("ROD Amendment") selecting high-rate ground water extraction followed by multi-phased treatment as the remedy to address ground water contamination at the MBS location.

3.11 1,1-dichloroethene, benzene, toluene, ethylbenzene, xylenes, and bis(2-ethylhexyl)phthalate are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4.

IV. CONCLUSIONS OF LAW

4.1 The McAdoo Associates Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and the Property is a "facility, establishment or other place or property" as described in Section 104(e)(3)(D) of CERCLA, 42 U.S.C. § 9604(e)(3)(D).

4.2 The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4.3 The Respondent owns the Property which is the subject of this Order.

4.4 "Hazardous substances", as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the McAdoo Associates Site and are currently present there.

4.5 The presence of hazardous substances at the McAdoo Associates Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

4.6 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and Section 300.400(d) of the NCP, 40 C.F.R. § 300.400(d), authorize EPA, the Commonwealth and their representatives to have access to the Site to conduct response actions.

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, and the Administrative Record that supports this Order, EPA has determined that:

AR000049

5.1 There is a reasonable basis to believe that there may be or has been a release or threat of a release of hazardous substances, at or from the McAdoo Associates Site.

5.2 Access to the Property is needed for EPA and/or its Representatives (as defined in paragraph 7.1 below) in order for EPA to determine the need for response or choose or take any response action under CERCLA, or otherwise enforce the provisions of CERCLA.

5.3 The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

5.4 EPA has provided the Property owner notice and opportunity for consultation regarding access as is reasonably appropriate under the circumstances.

VI. PARTIES BOUND

6.1 This Consent Order shall apply to and be binding upon Respondent and EPA, their successors, and assigns and upon all persons, contractors and consultants acting under or for either the Respondent, or EPA or any combination thereof. No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or its responsibilities under this Consent Order.

6.2 In the event of any change in ownership or control of the Site, Respondent shall notify the EPA in writing at least thirty (30) days in advance of such change and shall provide a copy of this Consent Order to the transferee in interest of the Site, prior to any agreement for transfer.

6.3 The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms of this Consent Order and to execute and legally bind the Respondent to this Consent Order.

VII. ACCESS TO BE PROVIDED

7.1 Respondent shall provide to EPA, its officers, employees, agents, consultants, and contractors, those acting under orders with EPA and those acting under authorization from the EPA (Designated Representatives), representatives of the Commonwealth, ("EPA and/or its Representatives"), ingress and egress to and from all portions of the Site upon reasonable notice (no less than 2 business days) for a period of up to thirty (30) years from the effective date of this Order for the purpose of conducting response actions as described in Section II (Statement of Purpose) above. EPA will provide Respondent, at Respondent's request, with the

AR000050

opportunity to accompany EPA on-Site and to split any or all samples taken by EPA and/or its Representatives. Upon request, EPA will provide Respondent with copies of all sample results or reports which have undergone quality assurance/quality control.

7.2 Respondent shall provide to EPA and/or its Representatives the use of and control over all portions of the Site for all of the purposes deemed necessary by the EPA for the implementation of response actions as described in Section II (Statement of Purpose) above. All work performed by EPA shall, to the extent practicable, be performed in a manner designed to minimize disruption of normal business activities on the Property.

7.3 Respondent agrees not to interfere with the activities of EPA and/or its Representatives on its property during the conduct of the response actions described in Section II (Statement of Purpose) above. Any such interference shall be deemed a violation of this Order.

7.4 Respondent agrees not to interfere with the operation, alter or disturb the integrity, of any structures or devices now or hereafter built, installed or otherwise placed by EPA and/or its Representatives on the Site, nor shall Respondent knowingly permit others to do so. Any such interference shall be deemed a violation of this Order.

7.5 Respondent agrees that all tools, equipment, and other property taken onto or placed upon the Site by EPA and/or its Representatives shall remain the property of EPA and/or its Representatives.

7.6 Respondent shall permit EPA and/or its Representatives to store in, on, or under the Site, all materials, including contaminated and non-contaminated materials, equipment, and supplies as deemed necessary by EPA.

7.7 If at any time following the effective date of this Order the Respondent becomes aware that the Site is entered, disturbed or adversely affected by persons other than EPA and/or its Representatives, Respondent shall immediately notify EPA's Project Coordinator designated in Section VIII below.

7.8 Respondent agrees that this Order shall be binding upon all successors and assigns and that any deed or other conveyance of any interest regarding the Site, as described in paragraph 3.3 above, made by the Respondent shall contain a clause or covenant that specifically provides for continued access as set forth in this Order.

AR000051

7.9 Respondent shall file a copy of this Consent Order with the deed to the Site with the Recorder of Deeds of Schuylkill County, Pennsylvania no later than then (10) days from the effective date of this Order.

7.10 Respondent agrees not to assert that any of the terms of this Order or any of the actions taken under this Order shall constitute a "taking" of its property without just compensation.

7.11 Notwithstanding any provision of this Consent Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute or regulation.

7.12 Respondent shall permit EPA and/or its Representatives to construct, operate, and maintain structures and facilities above and/or below ground on the Site for the storage, containment, treatment or disposal of the hazardous substances found on the Site.

7.13 Respondent shall permit EPA and/or its Representatives to clear all portions of the Site, including, but not limited to, the felling of trees, and the removal of buildings and other surface structures, including automobiles, tanks, and tank trucks; to remove fill and soil from the Site; to bring fill and soil onto the Site; to monitor and/or sample soil, wastes, sediment, air and water at the Site; to remove contaminated materials found on the Site; and to perform such activities that are reasonably deemed necessary by EPA to implement response actions at the Site.

7.14 Respondent shall not interfere with EPA and/or its Representatives should EPA and/or its Representatives post warning signs that relate to the response action at the Site.

7.15 Respondent shall not interfere with EPA and/or its Representatives should EPA and/or its Representatives drill borings, perform excavations and/or install monitoring wells at the Site.

7.16 EPA shall take reasonable precautions to minimize damage to the Property from the installation of equipment on the Property and will attempt to restore the Property, to the extent practicable, in the event of disruption. The restoration will be at level of current construction practices and will attempt to remedy any disruption caused by EPA, its officers, employees, agents, consultants and contractors.

VIII. EPA PROJECT COORDINATOR

8.1 The Project Coordinator for EPA is:

AR000052

Eugene Dennis
Remedial Project Manager
U.S. Environmental Protection Agency Region III (3HW24)
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-3153

8.2 EPA shall have the ability to change its Project Coordinator at any time without prior notice to Respondent. EPA's intent is to notify the Respondent as soon as practicable following any such change of its Project Coordinator.

8.3 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of the actions required by Section VII above, except when such stoppage or delay is specifically required by EPA.

IX. RESERVATION OF RIGHTS

9.1 Except as expressly provided in this Consent Order, (1) each party reserves all rights, claims, interests and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, including the right to seek injunctive relief, and the imposition of statutory penalties. Further, nothing herein shall preclude EPA from exercising its access rights as provided by Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

9.2 Nothing in this Consent Order shall limit the authority of the On-Scene Coordinator/Remedial Project Manager as outlined in the NCP and CERCLA.

X. OTHER CLAIMS

10.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

10.2 This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

AR000053

10.3 Nothing herein shall constitute or be construed as a satisfaction or release from liability of Respondent or any other persons.

XI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

11.1 The effective date of this Consent Order shall be seven (7) days from the date on which it is signed by EPA.

11.2 This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date seven (7) days after the date on which they are signed by EPA.

XII. LIABILITY OF THE UNITED STATES GOVERNMENT

12.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assigns, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities, including, but not limited to, obligations pursuant to this Consent Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondent in carrying out activities, including but not limited to obligations pursuant to this Consent Order. The actions undertaken by this Order are necessary to mitigate a real and substantial threat to the environment and are necessary to protect public health and safety. The burden imposed on the property is the minimum necessary to respond to the health and safety threat posed by that property as a result of the real and/or threatened contamination thereon.

XIII. CALCULATION OF TIME

13.1 Any reference to "days" in this Consent order shall mean calendar days, unless otherwise specifically provided therein.

XIV. TERMINATION AND SATISFACTION

14.1 The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been satisfactorily completed.

AR000054

XV. PENALTIES FOR NONCOMPLIANCE

15.1 Respondent is hereby advised that, pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), a court may assess civil penalties of up to \$25,000 per day for each day that the Respondent unreasonably fails to comply with this Order or any part thereof.

XVI. ADMINISTRATIVE RECORD

16.1 The Administrative Record supporting this Order is available for inspection at the EPA Region III office in Philadelphia, Pennsylvania. Respondent may arrange to review the record by contacting Lydia Isales, Esq. at (215) 597-9951.

FOR THE RESPONDENT:

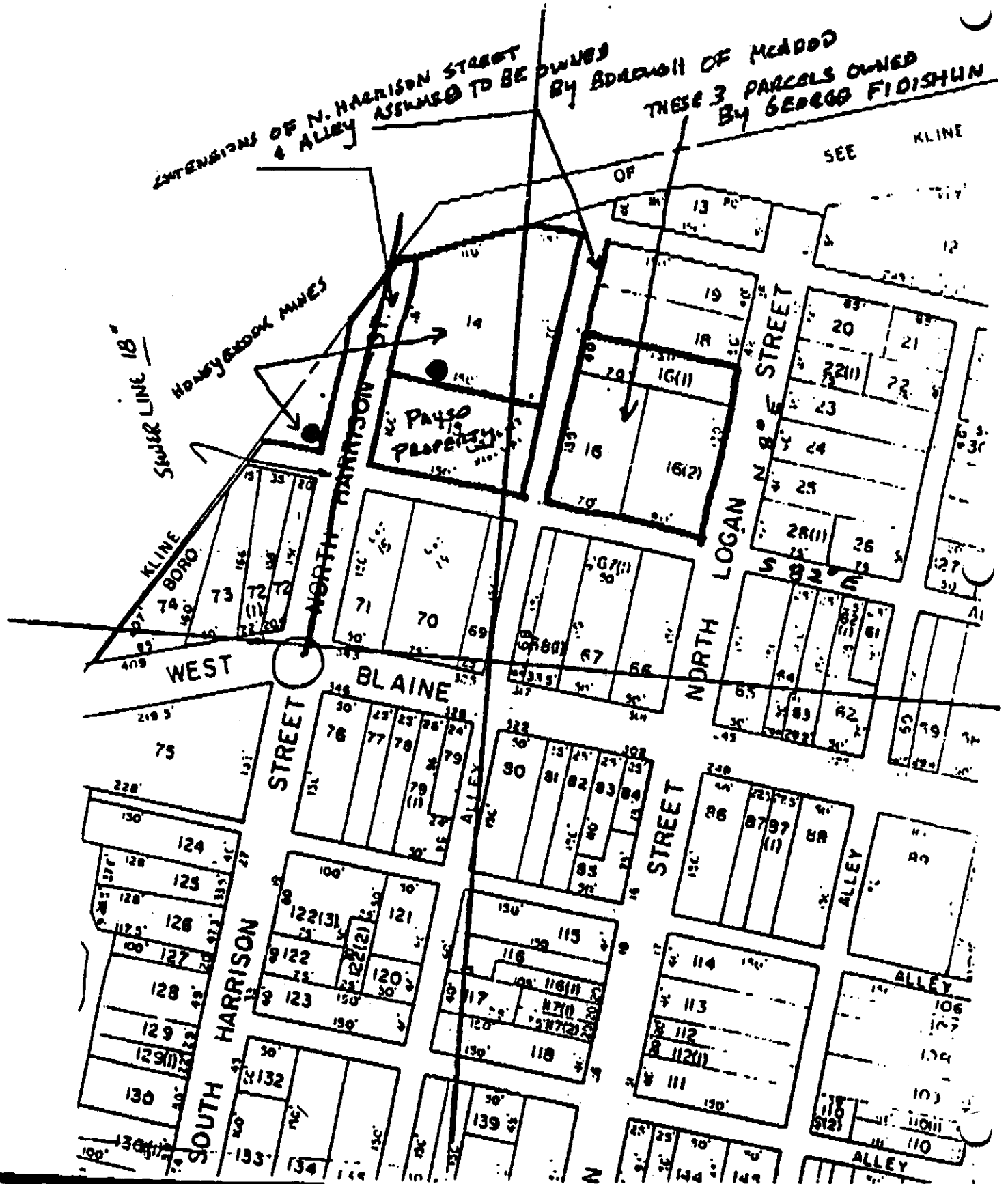
BY: Edward J. Bielen DATE: 11-3-94
NAME: Edward J. Bielen
McAdoo Borough, Schuylkill County, Pennsylvania
TITLE: President, McAdoo Borough Council

FOR THE EPA:

BY: Peter H. Kostmayer DATE: 12/21/94
Peter H. Kostmayer
REGIONAL ADMINISTRATOR
REGION III
U.S. ENVIRONMENTAL PROTECTION AGENCY

AR000055

EXHIBIT 1



AR000056